



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

January 17, 2017

EA-16-180

Mr. Michael Bowman, Sr.
Assistant Director
White Earth Department of Transportation
36671 Marten Drive
White Earth, MN 56591

SUBJECT: NOTICE OF VIOLATION - NRC ROUTINE INSPECTION REPORT
NO. 03038436/2016001(DNMS) - WHITE EARTH DEPARTMENT OF
TRANSPORTATION

Dear Mr. Bowman:

This refers to the U. S. Nuclear Regulatory Commission (NRC) inspection conducted on August 9, 2016, at your White Earth, Minnesota facility. The purpose of the inspection was to determine whether licensed activities were being performed in accordance with NRC requirements. During this inspection, an apparent violation of NRC requirements was identified. The significance of the issue and the need for lasting and effective corrective actions were discussed with you during the telephonic exit meeting on September 21, 2016. Details regarding the apparent violation were provided in NRC Inspection Report No. 03038436/2016001(DNMS), dated October 12, 2016. A copy of the inspection report can be found in the NRC's Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC's website at <http://www.nrc.gov/reading-rm/adams.html> under accession number ML16286A612.

In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violation identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated November 8, 2016, you provided a response to the apparent violation.

Based on the information developed during the inspection and the information that you provided in your November 8, 2016 response to the inspection report, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. The violation involved the failure to use a minimum of two independent physical controls to secure a portable moisture density gauge from unauthorized removal whenever the gauge was not under the control and constant surveillance of your staff as required by Title 10 of the *Code of Federal Regulations* (CFR) 20.1801 and 30.34(i). Specifically, between May 14, 2016, and August 9, 2016, the gauge was stored inside an unlocked storage cabinet in an unsecured garage. The garage was accessible to members of the public, and there were no individuals continuously present to maintain control or constant surveillance of the device. There was no evidence to suggest that members of the public had

accessed the gauge. The root cause of this violation was a lack of adequate oversight of the radiation safety program. The licensee's radiation safety officer (RSO) acknowledged that he took little interest in the gauge because he did not use it, and as a result, failed to ensure that the gauge was properly secured with two physical barriers when it was not under the control or constant surveillance of an authorized user. The failure to use two independent physical barriers to properly secure the gauge when stored is of safety significance to the NRC because of the potential for unauthorized individuals to gain control of the radioactive material, which could result in an unintended exposure to a member of the public. Therefore, this violation has been categorized, in accordance with the NRC Enforcement Policy, at Severity Level III. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$7,000 is considered for a Severity Level III violation.

Because your facility has not been the subject of escalated enforcement actions within the last 2 inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC determined that *Corrective Action* credit was warranted due to the following corrective actions: (1) maintained control and constant surveillance of the gauge until an additional lock could be added to the storage cabinet door; (2) installed a second lock and hasp on the storage cabinet door; and (3) placed the storage cabinet keys in a secured location, not available to unauthorized staff members or members of the public. In addition, to strengthen the radiation protection program, you planned to reassign the duties of the RSO to an individual who has taken RSO and Gauge User Training, and who has indicated his willingness to accept the responsibilities of being an RSO.

Therefore, to encourage prompt and comprehensive correction of violations, and in recognition of the absence of previous escalated enforcement action, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. In addition, issuance of this Severity Level III violation constitutes escalated enforcement action that may subject you to increased inspection effort. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

The NRC has concluded that information regarding: (1) the reason for the violation; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in NRC Inspection Report No. 03038436/2016001(DNMS), and your November 8, 2016 letter. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In addition, the NRC reviewed the corrective actions you implemented in response to the Severity Level IV violations in the Notice enclosed with our October 12, 2016, letter. Based on our review of your corrective actions documented in your November 8, 2016, letter, we have no questions at this time. These corrective actions will be reviewed during a future NRC inspection.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if any, will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Documents Access and

Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information).

Sincerely,

/RA by Kenneth G. O'Brien acting for/

Cynthia D. Pederson
Regional Administrator

Docket No. 030-38436
License No. 22-32823-01

Enclosure:
Notice of Violation

cc w/encl: State of Minnesota

M. Bowman

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Letter to M. Bowman from Cynthia D. Pederson dated January 17, 2017

SUBJECT: NOTICE OF VIOLATION - NRC ROUTINE INSPECTION REPORT NO.
03038436/2016001(DNMS) - WHITE EARTH DEPARTMENT OF
TRANSPORTATION

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OFC	R-III/EICS	RIII/DNMS	RIII/DNMS	RIII/OE	RIII/EICS	RIII
NAME	KLambert:jc	AMcCraw	JGiessner CL for	PHolahan ¹	RSkokowski	CPederson KGO for
DATE	12/21/16	12/22/16	12/23/16	1/13/17	1/17/17	1/17/17

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¹ OE concurrence provided via e-mail from Kerstun Norman on January 6, 2017

NOTICE OF VIOLATION

White Earth Department of Transportation
White Earth, Minnesota

Docket No. 030-38436
License No. 22-32823-01
EA-16-180

During a U.S. Nuclear Regulatory Commission (NRC) inspection conducted on August 9, 2016, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

Title 10 of the *Code of Federal Regulations* (CFR) 20.1801 requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

Title 10 CFR 30.34(i) requires that each portable gauge licensee use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Contrary to the above, from May 14 through August 9, 2016, the licensee failed to secure from unauthorized removal or access a portable gauge that was stored in a controlled area, and the licensee did not use a minimum of two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee stored a portable gauge in an unlocked storage cabinet in an unsecured garage during normal business hours, and there were no individuals continuously present to maintain control or constant surveillance.

This is a Severity Level III violation (Section 6.3)

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in NRC Inspection Report No. 03038436/2016001(DNMS) and the licensee's letter, dated November 8, 2016. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, (EA-16-180)," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region III, 2443 Warrenville Road, Lisle, IL 60532 within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response

Enclosure

should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days of receipt.

Dated this 17th day of January 2017